

**REPORT TO THE
UTAH LEGISLATURE**

Report No. 99-09

**A Performance Audit
of
Asset Forfeiture Procedures**

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Digest of A Performance Audit of Asset Forfeiture Procedures

There is little support for allegations that police are abusing their authority to seize and forfeit property. Sufficient oversight is provided from law enforcement agencies, internal controls, county prosecutors and the courts to prevent abuse of individual rights. However, some agencies need to improve the oversight and control of property taken into custody. In addition, many agencies are not using asset forfeiture proceeds according to requirements of the **Utah Code**. Although this report provides suggestions for how agencies can come into compliance with the law, legislators may consider clarifying rules for the distribution and use of forfeited assets.

The following summarizes the key findings and recommendations of this report:

Forfeitures Do Not Appear to Violate Individual Rights.

Contrary to what is said by critics of Utah's asset forfeiture laws, the law enforcement community is not abusing their authority to seize and forfeit assets. It has been alleged that in 80 percent of the cases, in which property was forfeited, the owner of the property was not charged with a crime. Our review of 65 asset forfeiture cases show that 91 percent of those from whom property was seized were also arrested and charged with crimes. The remaining 9 percent showed substantial evidence that property seized was used in violation of state law. We conclude the oversight being provided by county attorneys and the courts greatly reduces the likelihood that law enforcement is misusing the statute.

County attorneys can improve the oversight of asset forfeiture by requiring a single deputy county attorney to assume responsibility for prosecuting all asset forfeiture cases. In addition, we question the practice of some law enforcement agencies charging an impound fee on vehicles after the courts have denied a forfeiture request.

Recommendations:

1. We recommend each county attorney assign a single deputy county attorney to oversee all asset forfeiture cases.
2. We recommend law enforcement agencies revise impound charges so innocent property owners are not required to pay to retrieve their property.

Isolated Asset Management Problems Persist. Although allegations concerning police abuse of seized property are greatly overstated, some agencies need to improve the oversight of seized property. We were able to locate all of the seized assets in the 65 cases we reviewed, but also found a few isolated problems. There are two task force agencies, in particular, that have problems with the management of seized assets. One agency has been spending seized cash before it is forfeited to them. Another agency has lost items from its evidence room, lost seized cash and retained seized

property even though forfeiture against the property was not filed in court within the required 90-day deadline.

Recommendations:

1. We recommend law enforcement agencies adopt and enforce formal procedures for the oversight of seized assets.
2. We recommend law enforcement agencies consider it a conflict of interest for officers to directly or indirectly purchase items seized by the agency.
3. We recommend law enforcement agencies make sure all seized items are placed in a secure environment, such as an evidence room. Contraband and hazardous material should be destroyed if not needed as evidence.

Forfeiture Procedures Can Be Improved. Some of the goals of the statute are not being accomplished. The statute requires the courts verify that agencies have a need for forfeited assets before awarding the assets to them, however, this requirement is rarely carried out. In addition, confusion regarding the requirements in the statute regarding the disposal of forfeited assets has led the critics of asset forfeiture laws to misinterpret the statute's intent. They erroneously claim that all forfeited assets must be deposited with the Utah Division of Finance. Although the statute does not require forfeited assets be deposited with the Division of Finance, legislators may want to reconsider the rules regarding the distribution of forfeited assets so the goals of the statute are accomplished.

The statute also places certain conditions on how forfeited assets may be used. For example, the law requires forfeited assets only be used for enforcing the state's narcotics laws. In addition, proceeds from asset forfeiture must be used to supplement and not replace existing revenues. Finally, proceeds cannot be used to pay informants. We found many of these problems are due to law enforcement agencies not complying with these rules. Agencies often do not treat proceeds from asset forfeitures as restricted funds. This report describes the steps each agency should take in order to comply with the legal requirements placed on forfeited assets.

Recommendations:

1. We recommend law enforcement agencies maintain a separate account for all funds obtained through state forfeitures or provide other memoranda to document how forfeited assets were used.
2. We recommend law enforcement agencies limit the use of forfeited assets to expenditures which supplement, rather than supplant, their normal operating budget.
3. We recommend law enforcement agencies limit the use of forfeited assets to expenditures directly related to the enforcement of controlled substances laws or to the share of department-wide expenses that can be allocated to the narcotics unit.
4. We recommend the Legislature consider requiring an elected body oversee each law enforcement agencies use of forfeited assets.

5. We recommend the Legislature consider placing limits on the amount of forfeited assets an agency can accumulate. The Legislature could impose a cap on reserves of 25 percent of the agency's annual operating budget and/or require forfeiture proceeds be spent within two years. Excess forfeiture funds could then be distributed to other agencies or programs.
6. We recommend the Legislature consider relocating the oversight for and distribution of excess asset forfeitures to the Commission on Criminal and Juvenile Justice.